

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Police – Cyberabad – WP.No.13788/2004 filed by Sri Mohd Hidaythullah, Ex PC 541 of Erst while RR District - Orders – Issued.

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HOME (SER-II) DEPARTMENT

G.O.Rt.No. 1030

Dated:8-6-2012

Read:

From the DGP, AP, Hyderabad, Lr Rc.No. 4248/Appeal-1/2011, dated:14-1-2012

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**ORDER:**

In the reference read above, the Director General of Police, AP, Hyderabad, has informed that Sri Mohd Hidayathullah, Ex PC 541 of Erstwhile Ranga Reddy District, was dismissed from service for his un-authorized absence from duty on two occasions i.e from 8-4-1995 to 6-7-1995 and from 21-2-1996 to 19-4-1996 respectively after conducting Inquiry, vide DO.No. 1489/1997 dated: 10-11-1997. The appeal petition of the charged officer was considered and rejected by the appellate authority vide proceedings dated: 16-6-1999. The Hon'ble APAT has dismissed the OA.No. 6985/1999 filed by charged officer, vide orders dated: 25-2-2003. Aggrieved with the above, the charged officer has filed WP.No.13788/2004 before the Hon'ble High Court of AP and counter was also filed. The Hon'ble High Court, has issued the following orders dated: 23-6-2011 in WP.NO. 13788/2004:

“ the punishment imposed on the applicant is dis-proportionate (un-authorized absence in two spells) and that the interest of justice would suffice if punishment of stoppage of three increments with cumulative effect is imposed without back wages for the said period. However this order shall not be treated a precedent as the punishment is modified only based on the equity since the petitioner has crossed the age of superannuation from service”

2. The Director General of Police, Andhra Pradesh, Hyderabad, has stated that the CP, Cyberabad has stated that since the applicant Ex PC 541 has already crossed the age of superannuation on 30-8-2004, any final orders have to be issued only by the Government and has sent the OE PR file along with the connected records for orders of the Government. The CP, Cyberabad, has recommended for implementing the orders of the Hon'ble High Court of AP on humanitarian grounds as the petitioner rendered (30) years of service and the charge is also for un-authorized absence for four months in two spells. Further it is also mentioned in the same order that it shall not be treated precedent as the punishment is modified only based on the equity since the petitioner has crossed the age of superannuation from service. In other words, there would be no adverse implications, if the orders of the Hon'ble High Court are implemented.

3. The Director General of Police, Andhra Pradesh, Hyderabad, has stated that it is to be noted in this case that the dismissal order was issued in the November 1997 and the High Court order setting aside this order has been issued in June 2011 i.e seven years after the date of superannuation of the individual. He has, therefore, requested for orders whether the order dated: 23-6-2011 of the Hon'ble High Court of AP in WP.NO. 13788/2004 dated: 23-6-2011 may be implemented.

4. Government after careful examination of the matter, have observed that the Supreme Court in Union of India vs. Dhattha Linga Toshatwad (2005 (13) SCC 709) held that members of the uniformed forces cannot absent themselves of frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Cases of this nature, in whatever manner is described are cases of desertion particularly when there is apprehension of the member of the force being called upon to perform onerous duties in difficult terrains or an order of deputation which he finds inconvenient, is passed. Such matters cannot be taken lightly

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particularly when it relates to uniformed forces of this country. A member of uniformed force who overstays his leave by a few days must be able to give a satisfactory explanation. However, a member of a force who goes on leave and never reports for duties thereafter, cannot be said to be one merely overstaying his leave. He must be treated as deserter. He appears on the scene for the first time when he files a writ petition before the High Court rather than reporting to his commanding officer. In cases of this nature, dismissal from the force is justified, disciplinary action and cannot be described as disproportionate to the misconduct alleged. The apex court took the same view in its judgment reported in Omprakash v. State of Punjab (2011 (6) SLR 617).

5. In the case on hand, the Disciplinary Authority in his proceedings dated: 10-11-1997 found that Sri Mohd. Hidayatullah, Police Constable is a chronic absentee and as many as 4 occasions he had committed the same delinquency and failed to mend himself despite the punishments awarded to him. In view of the above, he is justified in dismissing the employee for his desertion from the force on 2 occasions from 8-4-1995 to 6-7-1995 and 21-2-1996 to 19-4-1996. Therefore, it may not be justified in interfering with the above penalty on the ground that the petitioner has rendered 30 years of service and the penalty imposed upon him is disproportionate to the gravity of the charge alleged against him.

6. Government, therefore, hereby direct the Director General of Police, Andhra Pradesh, Hyderabad, to file SLP in the Hon'ble Supreme Court of India, against the orders of the Hon'ble High Court of Andhra Pradesh in WP.NO. 13788/2004 dated: 23-6-2011 and also to obtain stay orders.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

P. GAUTAM KUMAR  
PRINCIPAL SECRETARY TO GOVERNMENT

To,  
The Director General of Police, AP, Hyderabad (with records)  
Sc/Sf

//Forwarded:: By order//

SECTION OFFICER